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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

- - - - -X
UNITED STATES OF AMERICA 18-CR-6094(G)
vs.
XAVIER TORRES, Rochester, New York
Defendant. March 31, 2022
11:07 a.m.
- - - - -X

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE FRANK P. GERACI, JR.
UNITED STATES DISTRICT JUDGE

JAMES P. KENNEDY, JR., ESQ.
United States Attorney
BY: ROBERT A. MARANGOLA, ESQ.
CASSIE M. KOCHER, ESQ.
Assistant United States Attorneys
500 Federal Building
Rochester, New York 14614
Appearing on behalf of the United States

MAURICE J. VERRILLO, ESQ.
3300 Monroe Avenue
Suite 301
Rochester, New York 14618
Appearing on behalf of the Defendant

ALSO PRESENT: Jesus Barberia, Spanish Interpreter

COURT REPORTER: Christi A. Macri, FAPR-RMR-CRR-CSR(NY/CA)
Christimacri50@gmail.com
Kenneth B. Keating Federal Building
100 State Street, Room 2640
Rochester, New York 14614

I N D E X

WITNESS FOR THE GOVERNMENT

Luis Rosario

Direct-examination by Mr. Verrillo

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Cross-examination by Mr. Marangola

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EXHIBIT

RECEIVED

Defendant 118-120

9

P R O C E E D I N G S

* * *

(WHEREUPON, the defendant is present).

THE CLERK: 18-CR-6094, U.S. vs. Xavier Torres.

Rob Marangola and Cassie Kocher are here for the Government.

Maurice Verrillo is here with defendant.

Jesus Barberia is here today as our interpreter.

Mr. Torres appears today for a continuation of the sentencing hearing.

Jesus, I'm going to swear you in now.

(WHEREUPON, the interpreter was sworn).

THE COURT: Are you Xavier Torres?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Okay. This matter's on for continuation of the hearing. I believe the Government indicated they had no additional witnesses; is that correct?

MR. MARANGOLA: Correct, Your Honor.

THE COURT: Mr. Verrillo?

MR. VERRILLO: Your Honor, I would at this time call Luis Rosario.

DEFENDANT'S WITNESS, LUIS ROSARIO, SWORN

DIRECT EXAMINATION

THE CLERK: Would you please state your name and spell your last name for the record?

1 **THE WITNESS:** Luis Rosario. I cannot do that.

2 **THE CLERK:** You can have a seat right up here.

3 **THE COURT:** You may proceed.

4 **BY MR. VERRILLO:**

11:10:25AM 5 Q. Good morning, Mr. Rosario.

6 A. Good morning.

7 Q. What is your relationship to Xavier Torres?

8 A. He's my son.

9 Q. Okay. Do you see him in the courtroom?

11:10:53AM 10 A. He's over there.

11 Q. Okay. All right.

12 **MR. VERRILLO:** I'd ask the record reflect he pointed
13 to his son.

14 **THE COURT:** Yes, the record will note the
11:11:00AM 15 identification of the defendant.

16 **BY MR. VERRILLO:**

17 Q. Mr. Rosario, how old are you?

18 A. 72. I will be 73 in July.

19 Q. Okay. Do you have children?

11:11:22AM 20 A. Yes, I have totally six kids.

21 Q. And what are their names and ages?

22 A. Linda Torres is 43 years old. Edes (ph) Torres, I do not
23 remember the age. Jose Luis, he's like around 40. And Marina
24 is around 45. Then comes Xavier.

11:12:47AM 25 I have two younger ones others, one is Juliana

1 Rosario because I changed my last name. The other one is Mary
2 Rosario.

3 Q. Okay. Where do you reside?

4 A. In Buffalo.

11:13:31AM 5 Q. Okay. Do you have an address where you reside?

6 A. Mariner Towers, One Mariner Tower, apartment 103.

7 Q. Okay. Was that One Mariner Towers?

8 A. Yes, correct.

9 Q. Okay. And who do you reside with?

11:14:08AM 10 A. With my spouse.

11 Q. Okay. And how long have you and your spouse resided at
12 Mariner Towers in Buffalo, New York?

13 A. I was living first, then I move out, then I move back. I
14 been living there for another 15 years.

11:14:48AM 15 **MR. MARANGOLA:** I'm sorry, I didn't understand that.
16 Could you repeat the answer?

17 **THE WITNESS:** I initially lived there for 15 years,
18 then I move out, and then I move back again to the same towers
19 and I been living there for another 15 years.

11:15:04AM 20 **THE COURT:** Did you say 15 and 15?

21 **THE INTERPRETER:** 15 and 15.

22 **THE COURT:** Thank you.

23 **BY MR. VERRILLO:**

24 Q. Where is your apartment complex located in Buffalo?

11:15:13AM 25 A. In the Mariner.

1 Q. When was the last time that you had contact with Xavier?

2 A. He frequently visited me before he got in prison, and he's
3 my son so he's always welcome to come and visit me.

4 Q. In June 2016 where did you reside?

11:16:01AM 5 A. In Mariner Towers.

6 Q. Are you familiar with Prospect Street in Buffalo?

7 A. Yes, yes. I live 50 years in Buffalo.

8 Q. Did you reside at 299 Prospect Street in June 2016?

9 A. That's not possible because I was living in Mariner Tower
11:16:54AM 10 for the last 15 years.

11 Q. Okay. Did you visit 299 Prospect Street on or about June
12 6th, 2016?

13 A. Yeah, I have acquaintances on that street. Perhaps I was
14 there.

11:17:25AM 15 Q. How is your health?

16 A. I'm feeling in perfect condition.

17 Q. Did you have any health issues in June 2016?

18 A. No. I've always been a very healthy and strong man. You
19 can see it.

11:17:54AM 20 Q. Did you need to use an oxygen tank in June 2016?

21 A. Never.

22 **MR. MARANGOLA:** I'm sorry. What was the answer?

23 **THE INTERPRETER:** Never.

24 **BY MR. VERRILLO:**

11:18:08AM 25 Q. Okay. Do you know an individual by the name of Victor

1 Nunez?

2 A. No, I do not know him, no.

3 Q. Do you know an individual by the name of John Gonzalez?

4 A. Neither.

11:18:29AM 5 Q. Okay.

6 **MR. VERRILLO:** Your Honor, I would like to show the
7 witness some photographs.

8 **BY MR. VERRILLO:**

9 Q. Sir, I'm showing you what has been marked as Exhibit 119,
11:18:49AM 10 which was previously Trial Exhibit No. 7. Do you know the
11 individual shown in Exhibit 118?

12 A. I never seen this person.

13 **THE COURT:** Okay. You said two different numbers.
14 Which one are you talking about?

11:19:06AM 15 **MR. VERRILLO:** I used Exhibit 118, Your Honor.

16 **THE COURT:** You said 119 originally. You're talking
17 about 118?

18 **MR. VERRILLO:** Yes, Judge.

19 **BY MR. VERRILLO:**

11:19:18AM 20 Q. I want to show you what has been marked as Defendant's
21 Exhibit 119. Do you know the individual depicted in
22 Exhibit 119?

23 A. Neither, I never seen him.

24 Q. Okay. Now, sir, I'm going to show you what is marked as
11:19:51AM 25 Exhibit 120. My question, sir, is that appears to be a house,

1 correct?

2 A. Yes.

3 Q. Did you live at that house in June of 2016?

4 A. No, no, it's not possible. I live in Mariner Towers. My
11:20:29AM 5 youngest -- my daughter was born in the Mariner Towers, and
6 she's nine years old.

7 Q. Mr. Rosario, when were you first contacted about whether
8 you were present or not at 299 Prospect Street in June of
9 2016?

11:21:21AM 10 A. I never live there. I never was asked about that place.

11 Q. Okay. Sir, isn't it true that I had recently contacted you
12 in this case?

13 A. Yes, yes.

14 Q. Okay. Had you been contacted by law enforcement regarding
11:21:48AM 15 this case prior to the time that I contacted you?

16 A. There was a good person went to my house, very humble
17 person, very good person went to my house before I -- I came
18 here.

19 Q. Now, since Xavier has been incarcerated, have you visited
11:22:30AM 20 him in jail?

21 A. No, no, I haven't had the opportunity to go and visit him.
22 I was able to send him some money, but I have not seen him.

23 **MR. VERRILLO:** Your Honor, for purposes of the
24 hearing I would offer Exhibit 118, 119 and 120.

11:23:03AM 25 **MR. MARANGOLA:** No objection, Judge.

1 **THE COURT:** Exhibits 118, 119 and 120 will be
2 received in evidence.

3 (**WHEREUPON**, Defendant Exhibits 118-120 were
4 received into evidence).

11:23:13AM 5 **MR. VERRILLO:** No further questions, Judge.

6 **THE COURT:** Thank you.

7 **CROSS-EXAMINATION**

8 **BY MR. MARANGOLA:**

9 Q. Sir, what exactly is your name?

11:23:29AM 10 A. Luis Rosario.

11 Q. And what's your date of birth?

12 A. 7/16/50.

13 Q. July 16, 1950?

14 A. Yes.

11:23:53AM 15 Q. Did you testify earlier that you changed your name at some
16 point?

17 A. At some point I was Luis Torres when I came to this
18 country, but I -- I was never recognized by my father Torres.

19 When I went to apply for welfare, it was discovered
11:24:52AM 20 that my father was -- never recognized me on my birth
21 certificate. So they changed my name to Luis Rosario.
22 Rosario is my mother's last name.

23 Q. And when was that?

24 A. Exactly I cannot remember. It was many years ago. I was
11:25:26AM 25 perhaps 25 years old. It was like 30 years ago.

1 Q. Okay. Mr. Rosario, you love your son?

2 A. Every father loves their son.

3 Q. Well, you don't want to see your son spend the rest of his
4 life in prison, correct?

11:26:04AM 5 A. Nobody wants that.

6 Q. I'm not asking about other people. I'm asking about you.

7 A. Yes, yes.

8 Q. All right. Now, Mr. Verrillo asked you when the last time
9 you spoke to your son was. I didn't understand what your

11:26:19AM 10 answer was. Can you tell us when the last time you spoke to
11 your son Xavier Torres?

12 A. Like a few weeks before he was in custody. He went to my
13 house because he usually came to see his sisters.

14 Q. And what's his sisters' name?

11:27:12AM 15 A. Juliana and Mary.

16 Q. And that was a few weeks before he was arrested?

17 A. Yes.

18 Q. And what was that date?

19 A. I cannot remember exactly when it was. I do not remember
11:27:46AM 20 exactly the days. I do not remember things well, and I do not
21 write down things on the calender.

22 Q. Do you remember the month and the year?

23 A. No, not the month. It was a few weeks -- some weeks
24 before he was arrested.

11:28:16AM 25 Q. Okay. Now, you were aware that your son was involved in

1 selling heroin for a number of years; is that right?

2 A. I didn't know anything about that. I do not spend time on
3 the streets. I just go, do my shopping, and go back to my
4 home and I just stay home.

11:28:55AM 5 Q. All right. So you were not familiar with what your son's
6 activities were while he was in the streets; is that fair to
7 say?

8 A. I do not know activities of my son on the street. I do
9 not go out because I have an accident, a car accident. I got
11:29:35AM 10 a broken leg and I have difficulty walking, so I stay home.

11 Q. Okay. So you're -- then you're not familiar with the
12 people that your son was selling drugs with?

13 A. I didn't know anything about that, no.

14 Q. Okay.

11:29:59AM 15 A. I never saw -- I never saw him doing it, so I cannot -- I
16 cannot say anything.

17 Q. When was the accident that you just mentioned?

18 A. The accident occurred 1975. And as a consequence of that
19 injury, I have several operations. My last one was two years
11:30:46AM 20 ago.

21 Q. When was it that you used an oxygen tank?

22 **MR. VERRILLO:** Objection. Objection.

23 **THE COURT:** Overruled.

24 **THE WITNESS:** Never in my life. I don't need it, I
11:31:06AM 25 never use it.

1 **BY MR. MARANGOLA:**

2 Q. So you've never used an oxygen tank at any point in your
3 life?

4 A. Never.

11:31:15AM 5 Q. And Mr. Verrillo asked you about Prospect Street in
6 Buffalo. I think he probably meant Prospect Avenue. Do you
7 know Prospect Avenue in Buffalo?

8 A. Yes, I lived on that street. I live around for many
9 years.

11:31:46AM 10 Q. And you lived right around the corner from Prospect Avenue
11 in Buffalo, right?

12 A. Yes.

13 Q. And you have associates or friends that live on Prospect
14 Avenue?

11:32:06AM 15 A. Yes, yes, I do have acquaintances that live there, I can
16 say that.

17 Q. And you have been over on Prospect Avenue yourself,
18 correct?

19 A. I walk by and if I see a friend that talk to me, I will
11:32:33AM 20 talk to him back.

21 Q. Okay. Mr. Rosario, do you know any of the defendants'
22 sisters? He has some half sisters; is that correct?

23 A. Yes, they are my daughters.

24 Q. Does he have any siblings from his mother who are not your
11:33:25AM 25 children?

1 A. Can you repeat the -- can you repeat the question, please?

2 Q. Sure. The defendant's mother, her name is Maria Ortiz; is
3 that right?

4 A. Yes.

11:33:53AM 5 Q. And Ms. Ortiz has had other children other than the
6 defendant; is that correct?

7 A. Yes, one more.

8 Q. And who is that child?

9 A. Her name is Sarah.

11:34:18AM 10 Q. Sarah Rivera; is that right?

11 A. I do not know. The mother knows the last name.

12 Q. When you say -- are you pointing at someone in court?

13 A. The mother is here in court.

14 Q. Xavier's mother is in court?

11:34:42AM 15 A. Yes.

16 Q. Okay. Did you know for a time that the defendant was
17 living in Rochester, New York?

18 A. I see the jail is here in Rochester, isn't it?

11:35:12AM 19 Q. I'm asking before he was arrested, did you know if the
20 defendant was living in Rochester?

21 A. Perhaps. I do not have -- I do not know how to explain
22 that because he was living in Buffalo. Now that he's in jail
23 he's in, he's here.

24 Q. Okay.

11:35:54AM 25 **MR. MARANGOLA:** I don't have any further questions.

1 Thank you, Judge.

2 **MR. VERRILLO:** Nothing further, Your Honor.

3 **THE COURT:** You may step down. Thank you.

4 (**WHEREUPON**, the witness was excused).

11:36:10AM 5 **THE WITNESS:** Thank you.

6 **THE COURT:** Thank you, have a good day.

7 Mr. Verrillo, do you have any additional testimony?

8 **MR. VERRILLO:** I have no additional testimony, Your
9 Honor.

11:36:30AM 10 I did prepare the subpoenas, which I know we were
11 trying to get e-mailed about the records that the Court would
12 consider of the witness. So that's the only thing that
13 remains.

14 **THE COURT:** You have those?

11:36:41AM 15 **MR. VERRILLO:** I have prepared them. Apparently my
16 associate had sent a copy to Mr. Ryck, which we haven't, but I
17 can get them.

18 **THE COURT:** I haven't seen them.

19 **MR. VERRILLO:** Okay. I think there was a problem
11:36:54AM 20 with e-filing it, so that's why. I can get that to the Court
21 and to counsel.

22 **THE COURT:** Okay. You're not going to have any
23 additional proof?

24 **MR. VERRILLO:** That's correct.

11:37:02AM 25 **THE COURT:** The Government will have no additional

1 proof?

2 **MR. MARANGOLA:** No, Your Honor.

3 **THE COURT:** So as soon as I get those subpoenas, get
4 those records into me and we'll put it down for a -- how about
11:38:05AM 5 we put the matter back on for April 27th, 3 p.m.? I'll have a
6 chance to review those records and review the testimony as
7 well, okay?

8 **MR. MARANGOLA:** Thank you.

9 **MR. VERRILLO:** Thank you, Judge.

11:38:16AM 10 **THE COURT:** We'll hold off sentencing until after I
11 make a determination on this. Thank you.

12 **MR. VERRILLO:** Thank you.

13 (**WHEREUPON**, proceedings adjourned at 11:38 a.m.)

14 * * *

15 **CERTIFICATE OF REPORTER**

16
17 In accordance with 28, U.S.C., 753(b), I certify that
18 these original notes are a true and correct record of
19 proceedings in the United States District Court for the
20 Western District of New York before the Honorable Frank P.
21 Geraci, Jr. on March 31st, 2022.

22
23 S/ Christi A. Macri

24 Christi A. Macri, FAPR-RMR-CRR-CSR(CA/NY)
25 Official Court Reporter